



MINUTES

**City of Scottsdale
JUDICIAL APPOINTMENTS ADVISORY BOARD
Regular Meeting
6:00 p.m., Tuesday, March 5, 2013
Human Resources Pinnacle Training Room
7575 E. Main Street**

PRESENT: Donald Alvarez, Chair
Judge Bruce Cohen, Vice Chair
Dr. Ira Ehrlich, Board Member
Judge Thomas LeClaire, Board Member
James Padish, Board Member
Francis Scanlon, Board Member
Kenneth Weingarten, Board Member

STAFF: Valerie Wegner
Sherry Scott
Bernadette La Mazza
Lorelei Oien

GUESTS: Julie Dybas
Presiding Judge Joseph Olcavage

CALL TO ORDER

The meeting was called to order at 6:07 p.m.

ROLL CALL

A formal roll call confirmed the presence of a quorum as noted above.

1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON JANUARY 7, 2012

**BOARD MEMBER WEINGARTEN MOVED TO APPROVE THE MINUTES OF THE
JANUARY 7, 2012 PUBLIC MEETING AS PRESENTED. BOARD MEMBER
EHRlich SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF
SEVEN (7) TO ZERO (0).**

2. ELECTION OF CHAIR AND VICE CHAIR

BOARD MEMBER WEINGARTEN MOVED TO REAPPOINT DONALD ALVAREZ AS CHAIR. BOARD MEMBER SCANLON SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

BOARD MEMBER EHRLICH MOVED TO REAPPOINT BRUCE COHEN AS VICE CHAIR. BOARD MEMBER LECLAIRE SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

3. APPROVAL OF 2012 JAAB ANNUAL REPORT

BOARD MEMBER EHRLICH MOVED TO APPROVE THE 2012 JAAB ANNUAL REPORT AS PRESENTED. BOARD MEMBER LECLAIRE SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

4. TIMELINE FOR JUDGE OREST JEJNA'S JUDICIAL REAPPOINTMENT

Valerie Wegner presented a draft of the proposed timeline to reappoint Judge Orest Jejna and reviewed what steps had been completed to date. On January 29, a letter and associate city judge application were sent to Judge Jejna on behalf of the Board inviting him to reapply for a new judicial term. Judge Jejna's completed application was received back in a timely manner and she shared that she had already received the survey participant contact lists from Julie Dybas, the new Court Administrator, as well. The survey process will remain the same since the Board did not have an opportunity to meet since the conclusion of the last reappointment to discuss possible changes to the survey process. She presented each Board Member with their due diligence interview assignments.

Ms. Wegner noted that on June 2, 2011, JAAB discussed the issue of confidentiality when discussing interview results. The Board decided that due diligence interviews are presumed to be confidential, but that Board Members may ask interviewees whether they want to keep the information confidential or if they would be willing to grant permission to discuss their responses in open meetings. The Board will have the opportunity to enter into executive session to discuss all or some of the comments. Chair Alvarez noted that the Board opted not to mention any names of the interviewees during public meetings, just their comments, being supportive of as much transparency as possible.

Ms. Wegner presented the Board Members with a list of 42 defense attorneys who have appeared in Judge Jejna's court over a three month period from October 1, 2012 through December 31, 2012 and mentioned that she would pass on names of prosecutors who have appeared in Judge Jejna's courtroom soon.

Ms. Wegner added that the JAAB had also discussed in a past meeting whether it would be beneficial to provide names of attorneys who have appeared in a judge's courtroom during a six month period, to potentially get more names for the JAAB members to contact when performing their due diligence interviews. She inquired if the Board would like her to work with the Court Administrator to go back an additional 3 months for Judge Jejna and discussion ensued. Board Member Padish commented that the list of 42 attorneys included many prestigious lawyers who would be able to offer useful and insightful information about Judge Jejna's judicial performance, and he did not think it

necessary to add to the list. Ms. Wegner also commented that it was likely that many of the same names would appear on the additional list as well.

BOARD MEMBER EHRLICH MOVED TO USE THE PROVIDED LIST OF DEFENSE ATTORNEYS, IN ADDITION TO THOSE NAMES OBTAINED FROM THE PROSECUTOR'S OFFICE. BOARD MEMBER SCANLON SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

Ms. Wegner proposed that the next JAAB meeting, to include the interview with Judge Jejna, be scheduled for April 1, 2013 which was supported by the board members. She then mentioned that at the present time, the Board's recommendation would be presented to City Council on April 23.

5. DISCUSSION OF ASSOCIATE CITY JUDGE TERM LENGTHS AND POSSIBLE ACTION WITH CITY COUNCIL

Chair Alvarez noted that Scottsdale judges, in the past, were able to be appointed to two two-year terms, followed by four-year terms thereafter but then the term lengths were restored to two years by a majority vote of the council about 5 to 6 years ago. He said he spoke to Mayor Lane about increasing term limits to reduce the pressure of judges having to reapply so frequently. Board Member Ehrlich said he strongly favors increasing the term limits. Vice Chair Cohen explained that the purpose of the initial two-year term is to reveal any issues that might arise with a new appointee. Those issues should become apparent within the first two years, making a second short term unnecessary.

Board Member LeClaire agreed that an initial two-year term provides both sides with an opportunity to evaluate a judge's performance. A second two-year term is administratively demanding and has no impact. Board Member Padish agreed that two years followed by four years would parallel the process used in the Superior Court. He felt judicial independence is compromised by short terms, since judges feel they are constantly auditioning for their jobs. This is not consistent with what Scottsdale wants from their court.

Chair Alvarez queried the rationale for shortening the terms. Sherry Scott said she did not know why the City Council Members at that time voted to amend the terms. They likely each had different reasons for doing so. It would take an amendment to the City Ordinance to change the term limits. Chair Alvarez asked whether the Ordinance has a provision for good cause termination. Ms. Scott explained that the City could terminate a judge for cause or simply allow their term to expire. Board Member Ehrlich noted that early termination is a far more complicated process than reappointment, and requires far more egregious behavior than simply bad reviews.

Vice Chair Cohen said the issue comes down to risk assessment. The longer a judge serves, the lower the risk becomes. A four-year term makes the judge less accountable, but gives them greater independence, so it is a trade-off. Length of term is important for preserving institutional knowledge. He felt it disrespectful to ask long-serving judges to reapply every two years.

Board Member Padish stated that as a lawyer, he wants a judge to be predictable, because it helps him fashion his argument in a way that best serves the interest of his clients. If JAAB is tasked with promoting the best judiciary possible, the City must attract the best candidates, and the best candidates expect stability.

Ms. Wegner noted that the terms for associate judges are set by Ordinance, but terms for the Presiding Judge require a change to the City Charter and voter approval. Ms. Scott clarified that the City Charter sets the initial term of a Presiding Judge at two years, though subsequent reappointments are determined by Ordinance.

BOARD MEMBER EHRLICH MOVED TO RECOMMEND THAT CITY COUNCIL AMEND THE CITY ORDINANCE TO REQUIRE A REAPPOINTMENT PROCESS EVERY FOUR YEARS FOR ANY PRESIDING OR ASSOCIATE JUDGE WHO HAS SERVED THEIR INITIAL TWO-YEAR TERM. BOARD MEMBER PADISH SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

BOARD MEMBER EHRLICH MOVED TO DIRECT MS. SCOTT TO DRAFT AN AMENDMENT TO THE ORDINANCE AND A COVER LETTER TO CITY COUNCIL FOR CHAIR ALVAREZ'S SIGNATURE TO EXPLAIN THE POLICY ISSUES THAT INFORMED THE BOARD'S RECOMMENDATION. VICE CHAIR COHEN SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

Ms. Scott asked the Board if they intended their recommendation to apply to pro tem judges as well. Judge Olcavage explained the process of appointing pro tem judges, and stated that it would be much easier if they did not have to be reappointed every two years. Unsatisfactory pro tem judges are simply not called back. He proposed mirroring the terms for the other judges.

BOARD MEMBER WEINGARTEN MOVED TO RECOMMEND THAT CITY COUNCIL AMEND THE CITY ORDINANCE TO REQUIRE A REAPPOINTMENT PROCESS EVERY FOUR YEARS FOR ANY PRO TEM JUDGE WHO HAS SERVED THEIR INITIAL TWO-YEAR TERM. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

6. FUTURE AGENDA ITEMS

Ms. Wegner announced that Associate Judge Blake's term is up in September of 2013. The terms of Presiding Judge Olcavage and Associate Judge Hendrix both expire in March of 2014. The Board will likely meet in the summer to discuss Judge Blake's reappointment, and by the end of 2013 to discuss the other two judges.

Ms. Wegner provided the Board with copies of Judge Jejna's courtroom schedule.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting of the Judicial Appointments Advisory Board adjourned at 6:56 p.m.

Recorded and Transcribed by AVTronics Inc., d/b/a AVTranz Transcription and Reporting Services

Respectfully submitted,
Valerie Wegner
HR Management Analyst

Reviewed by,
Donald Alvarez
JAAB Chairperson